

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/541,718 04/03/00 ULRICHSEN

B P-340.3 BURR

PM82/1108

EXAMINER

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ART UNIT	PAPER NUMBER
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3653

DATE MAILED:

11/08/00

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No.	09/541,718	Applicant(s)	Ulrichsen et al.
Examiner	Tuan Nguyen	Group Art Unit	3653

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE three (3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

Responsive to communication(s) filed on 4/3/00.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

Claim(s) 144, 145, 148-154, 156 - 166, 168 - 175 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 144, 145, 148-154, 156-166, 168 - 175 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been  received.

received in Application No. (Series Code/Serial Number) 08/776,689.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

### Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  Interview Summary, PTO-413

Notice of References Cited, PTO-892  Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

## Office Action Summary

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## **DETAILED ACTION**

1. The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

The following order or arrangement is preferred in framing the specification and, except for the reference to "Microfiche Appendix" and the drawings, each of the lettered items should appear in upper case, without underlining or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention.
- (b) Cross-References to Related Applications.
- (c) Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Microfiche Appendix" (see 37 CFR 1.96).
- (e) Background of the Invention.
  - 1. Field of the Invention.
  - 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (i) Claim or Claims (commencing on a separate sheet).
- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing (see 37 CFR 1.821-1.825).

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

3. Claims 151-154, 160-166, 168-171 and 174 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claims 151-154, 160-166 and 168-171 are indefinite because they depend from cancelled claims 147, 155 and 167, respectively.

In claim 174, line 2, "said stream" lacks proper antecedent basis.

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 144, 145, 148-150, 156-159 and 172-175 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-44 of U.S. Patent No. 6,060,677. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed subject matter of the application dominates and covers the claimed subject matter of the patent.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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7. Claims 144,145 and 174 are rejected under 35 U.S.C. 102(b) as being anticipated by EPO'221.

EPO'221 discloses a method and an apparatus for automatically inspecting matter for varying composition. The method and apparatus comprise advancing means 17 for advancing a stream of matter; a detection station 22; emitting means 11 to emit a detection medium (electromagnetic radiation) at a transverse section of the stream at the detection station; a plurality of detection zones at the detection station; and receiving means 28 to receive detection medium varied by variations.

8. Claims 148, 149, 159, 172, 173 and 175 are rejected under 35 U.S.C. 102(b) as being anticipated by Castaneda'558.

Castaneda'558 discloses a method and an apparatus of automatically inspecting matter for varying composition. The method and apparatus comprise a first stream (first channel) passing through a detection station (Fig. 2); a second stream (second channel) passing through the detection station; first and second emitting means (lamps not shown); and detection means (20 or 22) to produce a first and second detection data.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

10. Claim 150 is rejected under 35 U.S.C. 103(a) as being unpatentable over Castaneda'558.

The first and second stream of Castaneda'558 are not advanced in respective opposite directions.

However, it would have been obvious to one skill in the art to modify the first and second stream of Castaneda'558 to pass in opposite directions since it has been held that a mere reversal of essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

11. Claims 156-158 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castaneda'558 in view of Brizzi et al..

Castaneda'558 does not have a conveyor belt for a first and second advancing means. However, Brizzi et al. disclose a conveying apparatus comprising a conveyor belt 3; a first 18 and second 19 stream of articles having a first and second advancing means; and a partition 26.

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It would have been obvious to one skill in the art to modify the channels of Castaneda'558 to have a single conveyor belt having a first and second advancing means as taught by Brizzi et al. to form a single stream of products from a plurality stream of products.

12. Any inquiry concerning this communication should be directed to Examiner Tuan Nguyen at telephone number (703) 308-3664.



TUAN N. NGUYEN  
PRIMARY EXAMINER

11/3/00

tnn,

November 03, 2000.